

635.010 Complaint -- Duties of county attorney and court-designated worker.

- (1) In each District Court, the court-designated worker shall receive complaints alleging that a public offense has been committed. All cases governed by KRS Chapter 635 requiring Circuit Court action or 640 requiring Circuit Court action shall be set for arraignment. All other public offenses shall be proceeded against in accordance with the following:
 - (a) The county attorney shall cause a review to be made of each complaint. The purpose of this review shall be to determine from the available evidence whether there are reasonable grounds to believe that the alleged facts would constitute a public offense. The county attorney may elect not to proceed with the complaint and shall dismiss the complaint;
 - (b) In the event the county attorney elects to proceed, the court-designated worker shall make a preliminary determination as to whether the complaint is complete, consulting with the county attorney as may be necessary. In any case where the court-designated worker finds that the complaint is incomplete, the court-designated worker shall return the complaint without delay to the person or agency originating the complaint or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction of the offense, and request, and the complainant shall promptly thereafter furnish, additional information in order to complete the complaint. If the court-designated worker determines that the complaint is complete, he shall conduct a preliminary intake inquiry concerning such complaint to determine whether in the interest of justice the complaint can be resolved informally without the filing of a petition. The court-designated worker may recommend that a petition be filed. Prior to conducting a preliminary intake inquiry, the court-designated worker shall notify the child and the child's parent, guardian or other person exercising custodial control or supervision of the child in writing:
 1. Of their opportunity to be present at the preliminary intake inquiry;
 2. Of their right to have counsel present during the preliminary intake inquiry as well as the formal conference thereafter;
 3. That their participation in the preliminary intake inquiry or any resulting plan of diversion is voluntary;
 4. That all information supplied by the child to a court-designated worker during any process prior to the filing of the petition shall be deemed confidential and shall not be subject to subpoena or to disclosure without the written consent of the child; and
 5. That the child has the right to deny the charge and demand a formal court hearing;
 - (c) Upon the completion of the preliminary intake inquiry, the court-designated worker shall conduct a formal conference at which time he shall present information obtained at the preliminary intake inquiry to the child and the child's parents or other person exercising custodial control or supervision. The

court-designated worker shall set forth in writing alternative referral programs available to the child and the criteria the court-designated worker used to determine whether to proceed with a diversionary agreement or whether to refer the matter for the filing of a public offense petition. If the court-designated worker determines that, in his judgment, the interests of the child and the public will be thereby best served, with the written approval of the county attorney he may recommend that a public offense petition not be filed. If such a recommendation is made, the court-designated worker shall advise in writing the complainant, the victim if any, and the law enforcement agency having investigative jurisdiction of the offense of the recommendation and the reasons therefor and that the complainant, victim, or law enforcement agency may submit within ten (10) days from receipt of such notice a complaint to the county attorney for special review;

- (d) The county attorney, upon receipt of a request for special review, shall consider the facts presented by the complainant and by the court-designated worker who made the recommendation that no petition be filed, before the county attorney makes a final decision as to whether a public offense petition shall or shall not be filed. In all cases in which the child is alleged to have committed a public offense and is not detained, the court-designated worker shall submit his written recommendation to the county attorney or designee within twenty (20) days, exclusive of weekends and holidays, from the date the child was taken into custody or the complaint was filed. In cases where the child is detained, the court-designated worker's report shall be submitted within seventy-two (72) hours of the time the child is ordered detained;
- (e) In cases where the court-designated worker has recommended and the Commonwealth's attorney or county attorney, as appropriate, has consented in writing that a public offense petition not be filed and the complainant or victim, if any, or law enforcement agency having investigative jurisdiction of the offense has not called for a special review, said worker and the child may enter into a diversionary agreement. Such agreement may include the following: an informal plan of services provided by the court or its staff; referral of the child to a public or private organization, agency, or person to assist the child and the child's family to resolve the problems presented in the complaint; referral to a community service program in accordance with the provisions of KRS 635.080(2); restitution, limited to the amount of actual property or pecuniary loss incurred by the victim, provided that the youth has the means or could acquire the means to make restitution; and other such programs or efforts which might reasonably benefit the community and the child. In assessing periods of community service to be performed and restitution to be paid by the youth who has entered into a diversion agreement, the court-designated worker shall, to the extent possible, involve members of the community. Such members of the community shall meet with the youth and advise the court-designated worker as to the terms of the diversionary agreement and shall supervise the youth in carrying out its terms. The diversionary agreement shall not cover a period in excess of six (6) months;

- (f) If the terms of the agreement are successfully completed, the court-designated worker shall dispose of the complaint, the charges shall be considered dismissed and further prosecution is prohibited. In the event the child fails to comply with the terms of the agreement, the court-designated worker shall provide ten (10) days' written notice to the child and the child's parent or other person exercising custodial control or supervision and counsel of his intent to file a public offense petition based upon the original complaint, whereupon the court-designated worker shall meet and confer with the child and the child's parent or other person exercising custodial control and supervision and counsel to consider from the child's viewpoint why a petition should not be filed; and
 - (g) In the event that a complaint is not disposed of as a result of an agreement or in the event that the child fails to comply with the terms of an agreement and a petition is filed, the court shall proceed with the petition in accordance with the provisions of KRS Chapter 610 as if the agreement had never been formulated. In the event that a petition is filed based upon the court-designated worker's determination that the child has failed to comply with the terms of an agreement, the child may upon arraignment of said petition move for dismissal of the petition on the basis that the agreement was substantially complied with.
- (2) In the event a public offense petition is filed, it shall be verified by information and belief and contain the information listed in KRS 610.020.
 - (3) The court-designated worker shall refer all felony case charges involving the use of a firearm to the Commonwealth's attorney and all other felony case charges to the county attorney for prosecution in the appropriate court. The court-designated worker may recommend to the county attorney the diversion of felony charges if those charges do not involve the use of a firearm. The county attorney, if he agrees, may transfer the matter to the court-designated worker for appropriate action and supervision.
 - (4) Except as provided in KRS 605.030 and 605.040, the court-designated worker shall refer all misdemeanor cases, violation cases, and motor vehicle traffic offense cases to the county attorney for prosecution in the appropriate court.
 - (5) Except as provided by KRS 605.030 and 605.040, the court-designated worker shall refer all status offense cases to the county attorney for prosecution in the appropriate court.

Effective: July 15, 1997

History: Amended 1996 Ky. Acts ch. 358, sec. 39, effective July 15, 1997. -- Amended 1988 Ky. Acts ch. 350, sec. 94, effective April 10, 1988. -- Created 1986 Ky. Acts ch. 423, sec. 124, effective July 1, 1987.

Legislative Research Commission Note (7/15/96). Under 1996 Ky. Acts ch. 358, sec. 67(1), the amendment of this statute by Section 39 of that Act becomes effective July 15, 1997.